



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,893	03/31/2004	Frederick L. Travelute III	3000.193	5764

21176 7590 06/05/2007
SUMMA, ALLAN & ADDITON, P.A.
11610 NORTH COMMUNITY HOUSE ROAD
SUITE 200
CHARLOTTE, NC 28277

EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
----------	--------------

1771

MAIL DATE	DELIVERY MODE
-----------	---------------

06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/813,893	Applicant(s) TRAVELUTE ET AL.	
	Examiner Hai Vo	Art Unit 1771	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-11, 13-21 and 40-60.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The proposed amendment would be entered if claim 2 is properly corrected to avoid insufficient antecedent basis for the limitation "said inert nucleating agent" in the claim. The claims are obvious in view of the proposed amendment for the following reasons. Applicants argue that nothing in the prior art discloses or suggests the use of a polyethylene-glycol-polyester copolymer for better foam than polyester standing alone. The fact that applicants have recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Since there is a guidance to combine Nichols and Siggel, the combination of the references makes out the 103 rejections.

Applicants argue that while Li discloses the voids accupying at least 10% of the cross-sectional area of the fiber, one working example shows 15-20% void volume over the the cross-sectional area of the fiber. The working samples are provided for the purpose of illustration only and are not intended to be limiting the scope of the invention. Therefore, it is the examiner's position that Li teaches the void fraction set out in the claims.

It appears that nothing in Applicants' specification discloses or suggests the inclusion of additional materials in the foamed fiber affects the novel or basic characteristics of Applicants' invention. Therefore, Applicant bears the burden in establishing that non-recited components materially change the characteristics of Applicants' invention (MPEP 2112; *In re Delajarte* 143 USPQ 256) in order to overcome the finding of obviousness. Accordingly, the language "consisting essentially of" is treated as "comprising" until Applicants provide the evidence in establishing that non-recited components materially change the characteristics of Applicants' invention. Since the silicone oil is a required component of fiber composition of Siggel, the "consisting of" would be sufficient to exclude Siggel as prior art.

Applicants argue that the rejection over Li is groundless because Li is silent as to the hollow foam fiber issue. The arguments are not quite accurate in view of the full disclosure of Li. Li does not disclose the self-crimp foamed fiber is a hollow fiber. However, Li mentions the hollow fibers are known in the fiber art (column 1, lines 30-35). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the hollow self-crimped foamed fibers motivated by the desire to reduce the weight and the cost of the product without affecting the mechanical strength of the fibers.

Applicants have reiterated positions taken with respect to the rejection of claim 55, the examiner's comments set forth above are equally pertinent in the support of the rejection as well.

The 102/103 art rejections over Li will be withdrawn in view of the proposed amendment. However, the 102/103 rejections will be changed to the 103 rejections over Li in view of Nichols and Soehngen.

Hai Vo
HAI VO
PRIMARY EXAMINER